

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Yu	Team: Squad #8	CCRB Case #: 201900859	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 01/26/2019 5:27 AM	Location of Incident: § 87(2)(b)	Precinct: 101	18 Mo. SOL 7/26/2020	EO SOL 3/12/2021	
Date/Time CV Reported Mon, 01/28/2019 9:04 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 01/28/2019 9:04 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Christophe Ponce	30561	965422	101 PCT
2. POM Jesse Jansky	02277	954973	101 PCT
3. POM Raul Ramirez	19912	959112	101 PCT
4. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Marcos Mourino	16401	957877	101 PCT
2. POM Salvatore Gallina	17994	958612	101 PCT
3. POM Brian Ince	29270	965209	101 PCT
4. POM Derek Theiss	09851	957212	101 PCT
5. POM Denis Hickey	10703	964558	101 PCT
6. POM Matthew Regan	16611	957992	101 PCT
7. POM Michael Lynch	18980	962565	101 PCT
8. POM Marcus Fuller	12462	964520	101 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Raul Ramirez	Abuse: Police Officer Raul Ramirez entered § 87(2)(b)	§ 87(2)(g)
B.POM Christophe Ponce	Abuse: Police Officer Christopher Ponce entered § 87(2)(b)	§ 87(2)(g)
C. Officers	Off. Language: § 87(2)(b) officers made remarks based on the perceived mental status of § 87(2)(b)	§ 87(2)(g)
D.POM Raul Ramirez	Abuse: § 87(2)(b) Police Officer Raul Ramirez threatened § 87(2)(b) with the use of force.	§ 87(2)(g)
E.POM Jesse Jansky	Force: § 87(2)(b) Police Officer Jesse Jansky used physical force against § 87(2)(b)	§ 87(2)(g)

Officer(s)	Allegation	Investigator Recommendation
F.POM Christophe Ponce	Force: § 87(2)(b) Police Officer Christopher Ponce used physical force against § 87(2)(b)	§ 87(2)(g)
G.POM Raul Ramirez	Discourtesy: At the 101st Precinct stationhouse, Police Officer Raul Ramirez spoke discourteously to § 87(2)(b)	§ 87(2)(g)
H.POM Raul Ramirez	Off. Language: At the 101st Precinct stationhouse, Police Officer Raul Ramirez made remarks based on the perceived mental status of § 87(2)(b)	§ 87(2)(g)

Case Summary

On January 28, 2019, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System.

On January 26, 2019, at approximately 5:27 a.m., PO Raul Ramirez and PO Christopher Ponce of the 101st Precinct entered § 87(2)(b) (**Allegation A: Abuse of Authority, § 87(2)(g)**; **Allegation B: Abuse of Authority, § 87(2)(g)**). While § 87(2)(b) was in her bedroom, she allegedly heard unidentified officers make offensive remarks about her mental health (**Allegation C: Offensive Language, § 87(2)(g)**). As officers informed § 87(2)(b) that she was going to be arrested, PO Ramirez entered § 87(2)(b)'s room and pointed his taser at § 87(2)(b) (**Allegation D: Abuse of Authority, § 87(2)(g)**). Officers subsequently handcuffed § 87(2)(b). As the officers escorted § 87(2)(b) out of the residence, PO Jesse Jansky of the 101st Precinct and PO Ponce pulled § 87(2)(b) out (**Allegation E: Force, § 87(2)(g)**, **Allegation F: Force, § 87(2)(g)**). § 87(2)(b) was charged with § 87(2)(b) § 87(2)(a) 160.50 (Board Review 20). § 87(2)(b) was transported to the 101st Precinct stationhouse.

At the stationhouse, § 87(2)(b) was placed in the holding cell. While § 87(2)(b) was in the holding cell, PO Ramirez allegedly used profanities and made offensive remarks about § 87(2)(b)'s mental health (**Allegation G: Discourtesy, § 87(2)(g)**; **Allegation H: Offensive Language, § 87(2)(g)**).

The investigation is in possession of 12 BWC clips from 10 officers which captured this incident (Board Review 03-14).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Raul Ramirez entered § 87(2)(b)

§ 87(2)(b):

Allegation (B) Abuse of Authority: Police Officer Christopher Ponce entered § 87(2)(g)

§ 87(2)(b)

It is undisputed that § 87(2)(b) called 911 to report that § 87(2)(b) attacked him inside § 87(2)(b) (Board Review 21, 22, 23). § 87(2)(b) reported to the 911 operator that § 87(2)(b) was intoxicated, possibly did not take her medication, that she has a knife, and believes that she was going to pour bleach on him. In the radio transmission, 911 dispatch relayed that § 87(2)(b) has a knife and was intoxicated. The EVENTS noted that § 87(2)(b) poured bleach on § 87(2)(b)'s clothes.

In her CCRB statement, § 87(2)(b) stated that prior to the officers arriving at her residence, she and § 87(2)(b) were engaged in a verbal dispute and § 87(2)(b) called the police (Board Review 02). § 87(2)(b) was in her bedroom when she saw officers in her residence. § 87(2)(b) did not know how the officers entered her residence and did not hear officers ask for permission to enter the residence.

In his phone statement to the CCRB, § 87(2)(b) stated that no one gave the officers permission to enter the residence (Board Review 01). § 87(2)(b) was ultimately uncooperative and did not provide a sworn statement.

PO Ramirez and PO Ponce responded to a family dispute at the location and were the first officers to arrive. In his CCRB statement, PO Ramirez stated that there was confusion from central as to whether the dispute involved both a firearm and a knife (Board Review 24). PO Ponce stated that the initial call was regarding a female with a knife but the call was then changed to a dispute with a firearm (Board Review 25). At the location, PO Ramirez and PO Ponce entered the front door of the residence, but neither officers recalled how they gained entry. PO Ramirez and PO Ponce then walked up to the third floor. PO Ponce did not recall whether § 87(2)(b) opened the door of the 3rd floor apartment or if PO Ramirez opened the door. PO Ramirez did not recall if § 87(2)(b) opened the door for the officers or if § 87(2)(b) was standing outside the apartment as he waited for the officers. Upon entering the residence, § 87(2)(b) informed PO Ramirez and PO Ponce that § 87(2)(b) pulled a knife on him. PO Ramirez added that § 87(2)(b) said that § 87(2)(b) also threw bleach on his clothing. § 87(2)(b) then told the officers that § 87(2)(b) was in the bedroom.

The information in EVENT #§ 87(2)(b) is consistent with the information § 87(2)(b) provided to the 911 operator. However, the EVENT was categorized as “dispute firearm/family (52F6).”

In the 911 radio communications audio, when 911 dispatch called § 87(2)(b) to ask if there was a firearm involved, the call disengaged after yelling was captured in the background (Board Review 22).

PO Ponce’s BWC was turned on prior to him and PO Ramirez entering the residence, but audio was not captured until after they were inside (Board Review 07). PO Ramirez’s BWC was turned on after he was inside § 87(2)(b)’s bedroom (Board Review 13).

§ 87(2)(g)

Under the emergency doctrine, warrantless entries by officers must (1) be on reasonable ground to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property; 2) the search is not primarily motivated by intent to arrest or seize evidence; and 3) there is some reasonable basis, approximating probable cause, to associate the emergency with the place to be searched, People v. DePaula, 179 A.D.2d 424 (1992) (Board Review 18).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation (C) Offensive Language: At § 87(2)(b), officers made remarks based on the perceived mental status of § 87(2)(b)

In her CCRB testimony, § 87(2)(b) stated that while she was in her room, she saw approximately ten officers speaking to § 87(2)(b) inside her apartment (Board Review 02). § 87(2)(b) heard § 87(2)(b) tell the officers that she was crazy and approximately four officers said that they knew that § 87(2)(b) was crazy. § 87(2)(b) was unable to recall what the officers specifically said and could not describe the subject officers.

PO Ramirez and PO Ponce denied hearing an officer say that § 87(2)(b) was crazy (Board Review 24 and 25).

After PO Ramirez and PO Ponce entered the residence, PO Salvatore Gallina, PO Brian Ince, PO Derek Theiss, PO Denis Hickey, PO Jesse Jansky, PO Matthew Regan, PO Michael Lynch, PO Marcus Fuller, of the 101st Precinct entered the residence. All of the aforementioned officers BWC captured the time from before they entered to when § 87(2)(b) was escorted out of the residence (Board Review 03-06 and 09-12). None of the BWC videos captured officers calling § 87(2)(b) crazy or speaking about her mental health.

§ 87(2)(b), § 87(2)(g)

Allegation (D) Abuse of Authority: At § 87(2)(b) Police Officer Raul Ramirez threatened § 87(2)(b) with the use of force.

§ 87(2)(g) PO Ramirez pointed his taser towards § 87(2)(b) inside her bedroom while § 87(2)(b) was dressed in a t-shirt and undergarments.

At 40 seconds of PO Ponce's BWC, PO Ramirez and PO Ponce enters § 87(2)(b)'s residence (Board Review 08). At 43 seconds, while inside what appears to be the living room, PO Ramirez draws his taser and holds it down by his side. At 50 seconds, PO Ramirez stands in the doorway of the bedroom and PO Ponce is behind PO Ramirez. PO Ramirez and PO Ponce enters the bedroom a few seconds later and sound is activated at 1:00 minute. § 87(2)(b) tells PO Ramirez and PO Ponce to get out and requests to get fully dressed. At 1:10, § 87(2)(b) says, "Listen. Ya want to do this? Yo. § 87(2)(b) get up." At 1:15, a taser warning light shines towards § 87(2)(b). At 1:20, § 87(2)(b) is seen walking towards § 87(2)(b) and telling her stop. PO Ponce immediately pulls § 87(2)(b) away. At 1:24, the taser warning light disappears. At 2:00, PO Ramirez and PO Ponce leave after a female officer enters the room and speaks with § 87(2)(b). PO Ramirez's BWC captures the events after the taser warning light was no longer on § 87(2)(b) (Board Review 13).

In § 87(2)(b)'s CCRB interview and § 87(2)(b)'s phone statement, they stated that § 87(2)(b) stood between § 87(2)(b) and PO Ramirez as PO Ramirez pointed his taser at § 87(2)(b) (Board Review 01 and 02). This allegation has not been pleaded given that § 87(2)(b) voluntarily walked in front of the taser as it was initially pointed towards § 87(2)(b) and was not directed towards § 87(2)(b).

During her CCRB interview, § 87(2)(b) stated that she was not sure whether she was under the influence of alcohol during the incident, but denied being under the influence of any other substance.

PO Ramirez and PO Ponce provided consistent accounts in regards to § 87(2)(b) appearing to be intoxicated. PO Ramirez stated that he believed she was intoxicated because there was an odor of alcohol emanating from her bedroom, because she was yelling and because of her erratic behavior. PO Ponce stated that § 87(2)(b) was unsteady and there was a glazed watery look in her eyes.

PO Ponce denied seeing § 87(2)(b)'s son, § 87(2)(b) § 87(2)(b) at the location and did not know where § 87(2)(b) was when she called for him (Board Review 25). After § 87(2)(b) called for § 87(2)(b) PO Ramirez pulled out his taser and pointed it at § 87(2)(b).

In his CCRB statement PO Ramirez stated that he believed that § 87(2)(b) wanted to fight when she shouted, "You want to do this" in a threatening manner (Board Review 25). PO Ramirez had an unobstructed view of § 87(2)(b) and could see her hands. PO Ramirez did not believe that she had a weapon on her person, but he did not know whether a weapon may have been concealed underneath the bedcovers or blankets immediately in front of her. PO Ramirez believed that § 87(2)(b) called for her son from the other room to assist with resisting the officers. PO Ramirez drew his taser and pointed it at § 87(2)(b) because of the two aforementioned reasons. § 87(2)(b)'s behavior remained agitated even when PO Ramirez pointed the taser at her.

As noted above, PO Ramirez and PO Ponce responded to a dispute involving a knife § 87(2)(g)

§ 87(2)(b) PO Ramirez and PO Ponce were the only officers inside the residence when they initially entered § 87(2)(b)'s room while there were three civilians inside the residence; § 87(2)(b) and § 87(2)(b) were inside § 87(2)(b)'s bedroom and § 87(2)(b) was elsewhere in the residence.

NYPD Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or otherwise protect life, or when it is reasonable to place person in custody or prevent escape from custody (Board Review 26).

NYPD Patrol Guide Procedure 221-08 states that officers may use conducted electrical weapons (CEW) against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or others (Board Review 16). Active resisting

includes evasive movements to avoid the officers attempts to gain control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody. Active aggression is the threat or overt act of an assault (physical or verbal), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.

§ 87(2)(b), § 87(2)(g)

Allegation (E) Force: At § 87(2)(b) Police Officer Jesse Jansky used physical force against § 87(2)(b)

Allegation (F) Force: At § 87(2)(g) Police Officer Christopher Ponce used physical force against § 87(2)(b)

In her CCRB statement, § 87(2)(b) stated that as the officers escorted her out of her residence, the officers pulled and pushed her from behind causing § 87(2)(b) to lose balance and falling on her knees (Board Review 02). As the officers escorted § 87(2)(b) down the stairs, the officers pushed and pulled § 87(2)(b) causing her to fall on her knees again. § 87(2)(b) sustained bruises to her knees as a result of her two falls to the ground.

PO Ramirez and PO Bonce stated that when the officers were escorting her out of the residence, § 87(2)(b) was periodically pulling her body away from the officers (Board Review 24 and 25). PO Ramirez stated that § 87(2)(b) was aggressive, yelled, and went limp. PO Ponce said that § 87(2)(b) repeatedly dropped her body weight as the officers tried to lead her out of the apartment. In response, the officers pulled § 87(2)(b) out of the apartment.

§ 87(2)(b), § 87(2)(g)

Starting at 8:44 of PO Salvatore Gallina's BWC footage, § 87(2)(b) is in handcuffs and officers lead her out of the bedroom (Board Review 03). PO Ponce and PO Ramirez are holding onto § 87(2)(b) as she screams and refuses to walk. At 9:26, § 87(2)(b) slowly leans back and lowers her body to the ground. PO Ponce subsequently pulls § 87(2)(b) up by her arm. While only PO Ponce had a hold of § 87(2)(b)'s one arm, § 87(2)(b) walks across PO Ponce. PO Jansky subsequently grabs § 87(2)(b)'s other arm and redirects her towards the exit with PO Ponce still holding § 87(2)(b)'s other arm. At 9:43, As PO Ponce and PO Jansky are holding § 87(2)(b)'s arm, it appears that § 87(2)(b) slowly drops straight to the floor while PO Ponce and PO Jansky immediately lifts her back up by her arms. At 9:55, PO Ponce is at the second step at the top of the stairs as he pulls § 87(2)(b) out of the door while PO Jansky stands next to § 87(2)(b) while still holding her. As they walked down the first flight of stairs, PO Ponce is facing § 87(2)(b).

§ 87(2)(b) and walking backwards while holding § 87(2)(b) and PO Jansky is to the side of § 87(2)(b). Throughout the video PO Jansky, PO Ponce, and other officers repeatedly tells § 87(2)(b) to walk while § 87(2)(b) to screams.

During the time PO Ponce was escorting § 87(2)(b) out of the residence, PO Ponce's BWC was partially obstructed by what appears to be his jacket. However, from PO Ponce's BWC, it does not appear that § 87(2)(b) was ever on the floor when they escorted her down the stairs. Between 07:40 and 9:37 of PO Jansky's BWC footage, it shows a closer angle of relatively the same occurrences as PO Gallina's BWC.

§ 87(2)(b), § 87(2)(g)

NYPD Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or otherwise protect life, or when it is reasonable to place person in custody or prevent escape from custody (Board Review 26).

§ 87(2)(b), § 87(2)(g)

Allegation (G) Discourtesy: At the 101st Precinct stationhouse, Police Officer Raul Ramirez spoke discourteously to § 87(2)(b)

Allegation (H) Offensive Language: At the 101st Precinct stationhouse, Police Officer Raul Ramirez made remarks based on the perceived mental status of § 87(2)(b)

In her CCRB statement, § 87(2)(b) stated that after approximately 20 minutes of being lodged in the holding cell, she heard PO Ramirez telling other officers, "Yo, she's fucking crazy," and "She's got fucking problems" (Board Review 02). In response, § 87(2)(b) grew angry. PO Ramirez entered the holding cell area and told § 87(2)(b) "Calm down. Calm the fuck down. That's all you have to do is calm the fuck down. What's your problem?"

PO Ramirez did not remember whether he stated the following at the 101st Precinct stationhouse: "She's fucking crazy. She's got fucking problems. Calm the fuck down" (Board Review 24). PO Ponce did not say or hear an officer say, "We know her. She's crazy." He did not say or hear an officer say, "Yo, she's fucking crazy. She's got fucking problems. Calm the fuck down."

PO Ramirez and PO Ponce turned their BWC on while § 87(2)(b) was inside the stationhouse and turned it off once she was placed in the holding cell (Board Review 08 and 14).

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 15).
- PO Ramirez has been a member of service for four years and this is the first CCRB complaint to which he has been a subject.
- PO Ponce has been a member of service for a year and this is the first CCRB complaint to which he has been a subject.
- PO Jansky has been a member of service for six years and has been a subject in two CCRB complaints and two allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of August 23, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 17).

§ 87(2)(b)

§ 87(2)(b)

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date